



Jeremiah "Jay" Nixon
Governor
State of Missouri

Jane A. Rackers, Division Director
DIVISION OF PROFESSIONAL REGISTRATION

Department of Insurance
Financial Institutions
and Professional Registration
John M. Huff, Director

MISSOURI REAL ESTATE COMMISSION
3605 Missouri Boulevard
P.O. Box 1339
Jefferson City, MO 65102-1339
Telephone: 573/751-2628
573-751-2777 FAX
800-735-2966 TTY Relay Missouri
800-735-2466 Voice Relay Missouri
<http://pr.mo.gov/realestate.asp>
realestate@pr.mo.gov
October 21, 2014

Janet Carder
Executive Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7196 9008 9111 5606 0179

SARAH SUE BROCKETT
BRANSON TRI LAKES PROPERTY MANAGEMENT LLC
114 WINTERGREEN
BRANSON MO 65616

RE: Missouri Real Estate Commission vs. Sarah Sue Brockett (2005006062) and
Branson Tri Lakes Property Management LLC (2005005758)

Dear Ms. Brockett:

Please find enclosed a copy of the Settlement Agreement between Missouri Real Estate Commission and Sarah Sue Brockett and Branson Tri Lakes Property Management LLC in the above referenced case.

Sincerely,


Janet Carder
Executive Director

JC/cmc

Enclosures

c: Craig Jacobs (interagency mail)
Sarah Sue Brockett and Branson Tri Lakes Property Management LLC (regular mail)

SETTLEMENT AGREEMENT
BETWEEN
THE MISSOURI REAL ESTATE COMMISSION,
SARAH SUE BROCKETT,
AND BRANSON TRI LAKES PROPERTY MANAGEMENT, L.L.C.

Sarah Sue Brockett (Brockett), Branson Tri Lakes Property Management, L.L.C. (Branson Tri Lakes) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Brockett's license as a real estate broker associate, no. 2005006062, and Branson Tri Lakes' license as a real estate association, no. 2005005758, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo. The MREC and Brockett and Branson Tri Lakes jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Brockett and Branson Tri Lakes acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and

¹ All statutory citations are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise noted.

substantial evidence; the right to cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Brockett and Branson Tri Lakes may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to them by law, Brockett and Branson Tri Lakes knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document as they pertain to them.

Brockett and Branson Tri Lakes acknowledge that they have received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Brockett and Branson Tri Lakes stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the

MREC that Brockett's and Branson Tri Lakes' real estate licenses, license nos. 2005006062 and 2005005758, respectively, are subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC, Brockett, and Branson Tri Lakes in Part II herein is based only on the agreement set out in Part I herein. Brockett and Branson Tri Lakes understand that the MREC may take further disciplinary action against them based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.

Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC, Brockett and Branson Tri Lakes herein jointly stipulate to the following:

1. Sarah Sue Brockett ("Brockett") holds a real estate broker associate license, No. 2005006062.
2. Branson Tri Lakes Property Management, L.L.C. (Branson Tri Lakes), is a Missouri limited liability company, charter no. LC0601959, and is licensed by the MREC as a real estate association, license No. 2005005758.

3. At all times relevant herein, Brockett was the designated broker of Branson Tri Lakes; and, as such, under § 339.710(12), RSMo, 20 CSR 2250-8.020(1), and 20 CSR 2250-8.120(7), Brockett bears responsibility for her own conduct as well as that of Branson Tri Lakes.

4. Section 339.710(12), RSMo, defines the term “designated broker” and provides:

(12) "Designated broker", any individual licensed as a broker who is operating pursuant to the definition of real estate broker as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker[.]

5. State Regulation 20 CSR 2250-8.020(1) provides:

(1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. . . .

6. State Regulation 20 CSR 2250-8.120(7) provides:

The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

7. Section 339.100.2, RSMo, which sets forth the grounds to discipline real estate brokers and salespersons, provides in part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

.....

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

.....

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860, or of any lawful rule

adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860[.]

Audits

8. From on or about September 20, 2010 through October 5, 2010, an MREC examiner conducted an audit and examination of Branson Tri Lakes' business records and escrow accounts ("First Audit") for the period of September 2009 through October 2010 ("First Audit Period").

9. From on or about January 10, 2012 through February 21 2012, an MREC auditor conducted an audit and examination of Branson Tri Lakes' business records and escrow accounts ("Reaudit") for the period of January 2011 through January 2012 ("Reaudit Period").

10. During the First Audit and the Reaudit, the MREC examined the property management escrow account, account no. xxxxxxxx605, a security deposit escrow account, account no. xxxxxxxx970, and a security deposit escrow account, account no. xxxxxxxx700.

Failure to Remit the Funds of Others

11. Brockett and Branson Tri Lakes managed real property for Creekside Grove, LLC, and issued a check no. 6240 from their property management escrow account in the amount of \$3,809.06 to Creekside Grove, LLC, which was voided, but not recorded as voided in Branson Tri Lakes' records. Their management of

Creekside Grove, LLC, terminated on November 14, 2011, but the \$3,809.06, which remained due and owing to Creekside Grove, LLC, was never remitted to Creekside Grove, LLC.

12. Brockett and Branson Tri Lakes managed real property for B&B Quality Properties and accepted a security deposit from a tenant in the amount of \$350. On June 1, 2011, Brockett and Branson Tri Lakes applied \$135.50 of the security deposit to the tenant's rent, leaving a balance of \$214.50 in the security deposit escrow account. The tenant moved from the property on July 31, 2011, but the remaining \$214.50 security deposit was never remitted to either the tenant or to B&B Quality Properties.

13. Brockett's and Branson Tri Lakes' failure to remit the remaining funds to Creekside Grove, LLC and B&B Quality Properties is a violation of § 339.790.2(1), RSMo, which states:

2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during, the relationship[.]

14. Based on the failure to remit and violation of § 339.790.2(1), RSMo, cause exists to discipline the real estate licenses of Brockett and Branson Tri Lakes under § 339.100.2(3) and (15), RSMo.

Owner's Accounts Overspent

15. Per the Reaudit, Brockett and Branson Tri Lakes paid expenses on behalf of Andrew and Allison Baldwin of \$364.52 on September 15, 2011, when inadequate funds were in their account, and did not reimburse the account until December 30, 2011.

16. Per owner statements dated September 15, 2010, examined during the First Audit, Brockett and Branson Tri Lakes overspent seven owner accounts maintained in the property management escrow account for a total amount of \$2,413.89.

17. Per owner statements, dated December 31, 2011, examined during the Reaudit, Branson Tri Lakes overspent four owner accounts maintained in the property management escrow account for a total of \$475.87.

18. Per the Reaudit, Brockett and Branson Tri Lakes overspent from the account of Robert Worden by paying an owner payment of \$1,260.00 twice, check

nos. 6378 and 6494, when there were not adequate funds in Worden's account to cover the second payment.

19. Per the First Audit, by an ACH transfer posted on May 20, 2010, Brockett and Branson Tri Lakes paid brokerage expenses in the amount of \$251.81 to Citi Platinum from the property management escrow account.

20. Per the Reaudit, on May 2, 2011 and June 1, 2011, Brockett and Branson Tri Lakes paid \$561.63 each to Citi Mortgage from the property management escrow account for payments on real property owned by Brockett and/or Branson Tri Lakes.

21. In February 2011, a wire transfer fee of \$15.00 and a purchase of deposit tickets for \$22.62 were charged to the property management escrow account when no funds were in the account to cover service charges.

22. In December 2011, an account analysis charge of \$5.94 was charged to the property management escrow account when no funds were in the account to cover service charges.

23. During the First Audit Period, Brockett and Branson Tri Lakes overdrew the property management account eight times, as shown on a January 29, 2010 bank statement.

24. During the Reaudit Period, Brockett and Branson Tri Lakes overdrew the security deposit account one time, as shown on the July 29, 2011 bank statement.

25. Based on the stipulations set forth herein regarding the overspending of the owners' accounts, Brockett and Branson Tri Lakes violated § 339.105.1, which states:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account.

26. Based on Branson Tri Lakes overspending of the owners' accounts, Branson Tri Lakes and Brockett violated 20 CSR 2250-8.220(1), which states:

A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall

ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

27. Based on the overspending of the owners' accounts and the violations related thereto, cause exists to discipline the real estate licenses of Brockett and Branson Tri Lakes under § 339.100.2(1) and (15), RSMo.

Security Deposit Account

28. Brockett and Branson Tri Lakes failed to remove the interest accruing in the security accounts on a timely basis in violation of § 339.105.1, RSMo, because such failure constituted a comingling of funds, providing cause to discipline the real estate licenses of Brockett and Branson Tri Lakes under § 339.100.2(15), RSMo.

Property Management without Written Agreements

29. Per the First Audit, Brockett and Branson Tri Lakes managed five parcels of real property on behalf of others without signed management agreements.

30. Per the Reaudit, Branson Tri Lakes managed real property on behalf of one owner without a signed management agreement.

31. By managing properties without signed management agreements, Branson Tri Lakes violated 20 CSR 2250-8.200, which states:

(1) When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

32. Based on the failure of Brockett and Branson Tri Lakes to maintain written management agreements, they failed to maintain books, records, contracts and other necessary documents in violation of § 339.105.3, RSMo, which states:

3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

33. Based on the stipulations set forth herein regarding failure to maintain written management agreements and the violation of 20 CSR 2250-8.200 and § 339.105.3, RSMo, cause exists to discipline the real estate licenses of Brockett and Branson Tri Lakes under § 339.100.2(15), RSMo.

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo.

34. Brockett and Branson Tri Lakes' licenses are on probation.

Brockett's license as a real estate broker associate and Branson Tri Lakes' license as a real estate association are hereby placed on PROBATION for a period of THREE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Brockett and Branson Tri Lakes shall be entitled to practice real estate under §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended, provided Brockett and Branson Tri Lakes adhere to all the terms of this agreement.

35. Terms and conditions of the disciplinary period. The terms and conditions of the disciplinary period are as follows:

A. Brockett and Branson Tri Lakes shall keep the MREC apprised at all times of their current address and telephone number at each place of residence and business. Brockett and Branson Tri Lakes shall notify the MREC in writing within ten (10) days of any change in this information.

B. Brockett and Branson Tri Lakes shall timely renew their real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain their license(s) in a current and active status. During the disciplinary period, Brockett and Branson Tri Lakes shall not place their real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040.

Alternatively, without violating the terms and conditions of this Settlement Agreement, Brockett and Branson Tri Lakes may surrender their real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Brockett and/or Branson Tri Lakes apply for a real estate license after surrender, Brockett and/or Branson Tri Lakes shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Brockett and Branson Tri Lakes shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Brockett and Branson Tri Lakes shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Brockett and Branson Tri Lakes shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Brockett and Branson Tri Lakes shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline the licenses of Brockett and/or Branson Tri Lakes under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Broker Acknowledgement. If at any time during the disciplinary period Brockett wishes to transfer her license affiliation to a new broker/brokerage, she must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other

required application, fee, and documentation necessary to transfer their license. Brockett must obtain the Broker Acknowledgement form from the MREC.

H. Brockett and Branson Tri Lakes shall, at their own expense, ensure that quarterly audits of any trust or escrow accounts used by Brockett and/or Branson Tri Lakes in conducting property management activities, including property management trust accounts and security deposit trust accounts, are conducted and completed by an independent certified public accountant ("CPA") approved by the MREC. Albert Schmid, CPA, is approved by the MREC. If Albert Schmid, CPA, is unable to perform the duties required by these paragraphs, Brockett and Branson Tri Lakes shall submit within 10 days to the MREC in writing a list of at least three CPAs, including the CPA's name, address and relationship to Brockett and Branson Tri Lakes. The MREC may approve one of the listed CPAs or may require Brockett and Branson Tri Lakes to submit additional names for consideration and approval. Brockett and Branson Tri Lakes shall, at their own expense, retain the approved CPA to conduct and complete the quarterly audits. The quarterly audit for each account should include a three-way reconciliation between the check register, the bank balance, and the

owner balance(s). Such quarterly audits shall begin with the fourth quarter of 2014, which ends on December 31, 2014, and continue throughout the disciplinary period, through the second quarter of 2017, which ends on June 30, 2017. Within 30 days of each quarter's end date, Brockett and Branson Tri Lakes shall cause the CPA who conducted the audit to mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that the CPA completed the quarterly reconciliation of the escrow or trust account(s). All documents necessary to prove the reconciliation should be submitted with the CPA's statement. If the CPA should find through the three-way reconciliation that the accounts were not balanced, the CPA report should include the detail and documentation necessary to show that all discrepancies were identified and corrected.

36. Upon the expiration of the disciplinary period, the license of Brockett and Branson Tri Lakes shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Brockett and Branson Tri Lakes have violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Brockett's and Branson Tri Lakes' licenses.

37. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

38. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Brockett and Branson Tri Lakes of §§ 339.010 through 339.205 and §§ 339.710 through 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

39. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

40. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Brockett and Branson Tri Lakes agree and

stipulate that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

41. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

42. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

43. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

44. Brockett and Branson Tri Lakes, together with their partners, members, managers, heirs, assigns, agents, employees, representatives and attorneys, do hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any

claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement.


The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

45. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEES

MISSOURI REAL ESTATE
COMMISSION


Sarah Sue Brockett


Janet Carder, Executive Director
Date: Oct. 17, 2014

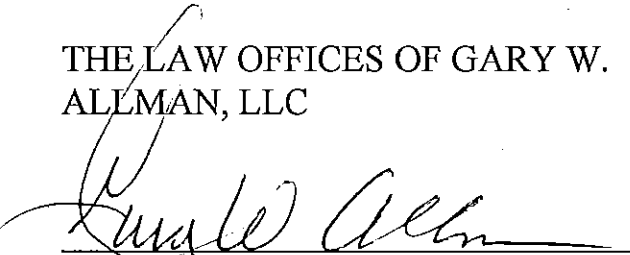
BRANSON TRI LAKES PROPERTY
MANAGEMENT, L.L.C.

By: 
Sarah Sue Brockett

Title: Managing Member

Date: 10-6-2014

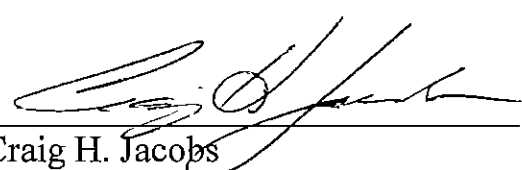
THE LAW OFFICES OF GARY W.
ALLMAN, LLC



Gary W. Allman
Attorney at Law
Missouri Bar No. 19921

P.O. Box 5049
Branson, Missouri 65615
Telephone: 417-332-2800
Fax: 417-332-1008
Attorney for Licensees

CHRIS KOSTER
Attorney General



Craig H. Jacobs
Assistant Attorney General
Missouri Bar No. 48358

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1143
Telefax: 573-751-5660

Attorneys for the MREC